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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/509,302	06/02/2000	STUART EDMUND BLACKET	P-5742	3553
7590	04/22/2004		EXAMINER	
R BLAKE JOHNSTON PIPER MARBURY RUDNICK & WOLFE P O BOX 64807 CHICAGO, IL 60664-0807			COZART, JERMIE E	
			ART UNIT	PAPER NUMBER
			3726	

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/509,302	BLACKET, STUART EDMUND	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jermie Cozart	3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 March 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-13 and 15-22 is/are pending in the application.
  - 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) Claim(s) 2-13 and 17-21 is/are allowed.
- 6) Claim(s) 15 is/are rejected.
- 7) Claim(s) 22 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/16/04 has been entered.

### ***Claim Objections***

2. Claim 22 is objected to because of the following informalities: In line 5, it is suggested to change "fasteners" to - -fastener- -. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by WO 95/35174.

WO 95/35174 discloses a rivet (4) comprising a head the thickness of which increases continually in a radially outwards direction to define a convex surface beneath the head. See *figures 1-7A for further clarification*.

Note that the recitation "for use in accordance with method of claim 17" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

***Allowable Subject Matter***

5. Claims 2-13 and 17-21 are allowed.
6. Claim 22 is objected to as containing a minor informality and would be allowed pending correction of the minor informality.
7. The following is a statement of reasons for the indication of allowable subject matter: Regarding **claim 17**, the prior art does not teach or suggest operating the assembly to the set fastener into engagement with the sheets such the shank of the fastener is upset in the die cavity without penetration of the lowermost sheet of the superimposed generally planar sheets, to deform all the sheets out of the one or more interface planes into the annular recess immediately adjacent the cavity the die, in combination with the other claimed limitations; Regarding **claim 22**, the prior art does not teach or suggest a die having a cavity with an annular recess immediately adjacent the cavity to set the fastener into engagement with the sheets such the shank of the fastener is upset in the die cavity without penetration of the lowermost sheet of the

superimposed generally planar sheets, to deform all the sheets out of the one or more interface planes into the annular recess immediately adjacent the cavity the die, in combination with the other claimed limitations.

***Response to Arguments***

8. Applicant's arguments, see pages 6-9, filed 3/16/04, with respect to claims 2-13, and 17-22 have been fully considered and are persuasive. The rejection of claims 2-13 and 17-22 based on DE 4419065 in view of Schleicher (5,051,020) has been withdrawn.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference cited on the attached PTO-892 is cited to show fastening sheets by riveting.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermie Cozart whose telephone number is 703-305-0126. The examiner can normally be reached on Monday-Thursday, 7:30 am - 6:00 pm.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 703-308-1789. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jermie Cozart  
Examiner  
Art Unit 3726

JC  
April 17, 2004